

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD SHORT,

Plaintiff,

Case No. 13-cv-13246

Hon. Matthew F. Leitman

v.

JOHN KELLY,

Defendant.

**ORDER (1) ADOPTING REPORT AND RECOMMENDATION (ECF #48),
(2) DISMISSING PLAINTIFF’S COMPLAINT (ECF #1) WITH
PREJUDICE, AND (3) TERMINATING DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT (ECF #36) AS MOOT**

On November 19, 2015, Magistrate Judge David R. Grand issued a Report and Recommendation (the “R&R”) recommending that the Court dismiss Plaintiff Richard Short’s (“Short”) Complaint. (*See* R&R, ECF #48.) The Magistrate Judge explained in the R&R that he had provided Short multiple opportunities to respond to a summary judgment motion filed by Defendant John Kelly (“Kelly”) on March 20, 2015, but that Short had failed to file any response. (*See id.* at 1, Pg. ID 357.) For example, on October 5, 2015, the Magistrate Judge issued a show cause order warning Short that if he did not respond to that order, or file a response to Kelly’s summary judgment motion, by November 5, 2015, his case could be dismissed (the “Show Cause Order”). (*See* ECF #46 at 1-2, Pg. ID 353-354.) Short never

responded to the Show Cause Order, and has still not responded to Kelly's summary judgment motion. The Magistrate Judge thus recommended that the Court dismiss Short's Complaint pursuant to Federal Rule of Civil Procedure 41(b) for want of prosecution.¹ (*See* R&R at 2-3, Pg. ID 358-359.) The R&R stated that the parties could object to and seek review of the recommendation within fourteen days. (*See id.* at 3-4, Pg. ID 359-360.)

Short has failed to file any objections to the R&R.² Failure to file objections to the R&R waives any further right to appeal. *See Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the Magistrate Judge's R&R releases the Court from its duty to

¹ Among other things, Rule 41(b) authorizes a Court to dismiss a case if "the plaintiff fails to prosecute or [fails] to comply with these rules or a court order...." Fed. Rule Civ. Proc. 41(b).

² It appears that Short may not have received a copy of the Show Cause Order or the R&R. The Court sent copies of both the Show Cause Order and the R&R to the address Short provided the Court, but the documents were returned to the Court as undeliverable. (*See* ECF ## 47, 49.) As the Magistrate Judge correctly explained in the R&R, under this Court's Local Rules, it is Short's responsibility to provide the Court correct and up-to-date contact information, and Short has failed to do so. (*See* R&R at 2, Pg. ID 358; *see also* E.D. Mich. Local Rule 11.2.) Thus, for the reasons stated in the R&R, the fact that the Show Cause Order and the R&R were returned to the Court as undeliverable does not excuse Short's failure to respond.

independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). The Court has nevertheless reviewed the R&R and agrees with the findings and conclusions of the Magistrate Judge.

Therefore, **IT IS HEREBY ORDERED** that the Magistrate Judge's November 19, 2015, Report and Recommendation (ECF #48) is **ADOPTED** as the Opinion of this Court. **IT IS FURTHER ORDERED**, for the reasons stated in the R&R, that Short's Complaint (ECF #1) is **DISMISSED WITH PREJUDICE**. **IT IS FURTHER ORDERED** that Kelly's motion for summary judgment (ECF #36) is **TERMINATED AS MOOT**.

Dated: December 28, 2015

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 28, 2015, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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